Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Clarification of Clerical Changes to 47 C.F.R. § 54.307 and for Direction to USAC	)))	CC Docket No. 96-45

COMMENTS OF MATANUSKA TELEPHONE ASSOCIATION

Matanuska Telephone Association ("MTA"), by its undersigned counsel, hereby responds to the request of the Wireline Competition Bureau[1] for comments on a letter request "for clarification of clerical changes to 47 C.F.R. § 54.307 and for direction to USAC" which was filed on June 29, 2005 by General Communication, Inc. ("GCI") (hereinafter, the "GCI Letter"). For the reasons set forth below, MTA opposes the requests for relief set forth in the GCI Letter.

MTA is an incumbent rural telephone cooperative providing local exchange telephone service pursuant to certificate No. 19 issued by the Regulatory Commission of Alaska. MTA serves approximately 59,000 subscriber lines across an area of nearly 10,000 square miles in south central Alaska. As will be explained in greater detail below, the GCI Letter, which alleges that the Federal Communications Commission ("FCC" or "Commission") lacked authority to publish a correcting amendment to rule 54.307 in the Federal Register,[2] is in fact an untimely and improper effort by GCI to reverse six years of Commission administration of high-cost

1 DA 05-2184, released July 27, 2005.

2 69 Fed. Reg. 34601, June 22, 2004 ("June 2004 Federal Register Notice").

universal service support that would severely compromise the cornerstone principle of competitive neutrality.

1. Removal of the Deleted Sentence was a proper <u>exercise of the Commission's rulemaking authority</u>

At the core of GCI's letter request is an effort to convince the Commission to reinstate a sentence in section 54.307 of the Commission's rules governing "Support to a competitive eligible telecommunications carrier" (hereinafter, "CETC") in high cost areas ("Deleted Sentence"). The Deleted Sentence actually did not address CETCs' entitlement to high cost support, but instead established a mechanism for reduction of the incumbent local exchange carrier's ("LEC's") support in instances in which the CETC provides facilities-based competition. Paragraph (a)(4) of section 54.307 instructed that a CETC that provides supported services to a customer using neither unbundled network elements nor wholesale service will receive the "full amount of universal service support that the incumbent LEC would have received for that customer." The Deleted Sentence went on to provide that the "amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier."

The Deleted Sentence in question was originally incorporated into section 54.307 in response to a request by GCI in December 1997[3] during a period of intense work by both the Commission and the Federal-State Joint Board on Universal Service to develop rules and procedures for implementation of the high cost and other support mechanisms under the

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3 *Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5366-68 (1997).

universal service program as redefined in section 254 of the 1996 Telecommunications Act.[4] In the course of just 41 months following adoption of this language, the Commission issued no fewer than 10 additional, significant orders reconsidering, revising and refining its procedures and substantive rules for implementation of section 254.

In one of these, the Commission's *Ninth Report & Order* in the proceeding,[5] the Commission revisited the universal service high cost support mechanism and adopted a new mechanism to ensure that the rates provided by non-rural carriers remain affordable and reasonably comparable in all regions of the country. A portion of the *Ninth Report & Order* was devoted to refining the procedures ensuring portability of universal service support between incumbent LECs and CETCs. The Commission took this opportunity to

> "reiterate that federal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and conclude that the same amount of support (i.e., either the forward-looking high-cost support amount or any interim hold-harmless amount) received by an incumbent LEC should be fully portable to competitive providers."[6]

In furtherance of this goal, the Commission mandated the synchronization of loop count reporting by incumbent LECs and CETCs on a regular quarterly basis in order to facilitate portability of support among carriers.[7]

As a result of its reconsideration of the high cost mechanism in the *Ninth Order*, the Commission issued a comprehensively amended version of rule 54.307, in which subsection (a)(4) disappeared altogether. The new (and current) subsection (a)(3) of the rule retained the directive that a CETC that successfully competes with an incumbent LEC for a customer on a

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4 47 U.S.C. § 254.

5 *Federal-State Joint Board on Universal* Service, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999).

6 *Id.* at 20480.

7 *Id.* at 20480-81.

facilities basis is to receive the full amount of universal service support that the incumbent LEC would have received for that customer. Understandably, the Commission -- having synchronized the requirements for high cost loop reporting between incumbent LECs and CETCs on a quarterly basis, thereby ameliorating the ability to track the migration of customers between incumbent and competitive providers -- no longer considered it necessary to retain the sentence in the rule which stated that the incumbent LEC would have the share of high cost support paid to the CETC actually deducted from the entitlement of the incumbent LEC.

Indeed, at the time that the *Ninth Report & Order* was under consideration, the Commission had been apprised by USAC that the mechanistic formula in the last sentence of former subsection (a)(4) of the rule actually gave rise to ambiguities in interpretation and even to illogical distribution calculations resulting in lower per-line support for incumbent providers than for competitive ones (*see* USAC letter to FCC dated February 11, 1999, attached as Exhibit A hereto). This result, of course, contradicted the requirement in section (a)(3) of the rule that the level of support to be received by CETCs should be identical to that of incumbent LECs with which they were competing. Accordingly, removal of the Deleted Sentence was required to eliminate an internal inconsistency in application of section 54.307 and to ensure that incumbent LECs were not penalized by receiving per-line support less than that available to CETCs operating in their own service areas. Thus, the Commission plainly acted to advance the public interest in deleting the sentence when it rewrote section 54.307.

Moreover, there was no ambiguity in the Commission's order that it was entirely replacing section 54.307 with a revised version.[8] As a result, it is improper for GCI to attempt to question this rule change over five years after it went into effect.

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8 *Id.*, Appendix C. GCI's argument that the June 2004 Federal Register Notice was somehow procedurally defective is baseless. An ellipsis that appeared in the version of section 54.307

2. GCI's requested "clerical" correction would improperly effect a major substantive rule change

In addition to the fact that deletion of the Deleted Sentence was a proper rulemaking exercise by the Commission, GCI's effort to reinstate that language at this time would effect a substantive amendment to the Commission's rules of far-reaching impact that would disrupt the established administration of the universal service high cost support mechanism for rural providers. Since it first undertook implementation of section 254 of the Act, the Commission has recognized that

> "compared to large ILECs, rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit as much from economies of scale and scope. For many rural carriers, universal service support provides a large share of the carriers' revenues, and thus, any sudden change in the support mechanisms may disproportionately affect rural carriers' operations."[9]

In recognition of the specialized needs of the rural LEC community, the Commission has deferred conversion of the calculation of universal service funding mechanisms from an embedded cost to a forward-looking cost methodology for such carriers. The use of embedded costs as the basis for calculating high cost support is critical to rural carriers that rely on universal service support to help maintain and upgrade legacy network infrastructure. When an incumbent LEC loses a subscriber to a CETC, the incumbent LEC is constrained to maintain the existing infrastructure that supported the subscriber for at least two reasons. First, the incumbent is normally the carrier-of-last-resort and must be ready to serve all customers upon request. Secondly, from a competitive perspective, the incumbent needs to protect its existing lines in

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published in the Federal Register in conjunction with the *Ninth Report & Order*, 64 Fed. Reg. 67416, 67431 (Dec. 1, 1999), was clearly extraneous since the original version of the revised rule as it appeared in the appendix to the order contained no subsection (a)(4). The Commission's correction of this clerical error in the June 2004 Federal Register Notice, albeit tardy, was entirely appropriate.

9 *Federal-State Joint Board on Universal Service*, First Report & Order, 12 FCC Rcd 8776, 8935 (1997).

order to be able to win the customer back from the CETC. By losing support for its embedded network and the costs required to maintain it, the incumbent rural LEC would effectively be eliminated as a continuing competitor to the CETC.

In its 2001 *Fourteenth Report & Order* in the universal service proceeding, the Commission adopted a "modified" embedded cost mechanism for rural carriers for an additional five-year period.[10] In that order, the Commission adopted the Rural Task Force's recommendation to re-base high cost loop support and to retain an indexed cap on the fund as a means of controlling growth of the fund. It also declined to adopt the Rural Task Force's proposal to freeze high cost loop support upon competitive entry into rural carriers' study areas.[11] The Commission concluded that these measures were required to provide rural carriers with stability for planning their investments over the near term while at the same time encouraging competition in high cost areas.[12]

In implementing this mechanism, the Commission recognized that the effect of its decisions was to protect the network cost basis of rural carriers during their transition into a competitive environment. It reasoned:

> "Due to the nature of telecommunications as an industry with high fixed costs, an incumbent carrier's loss of subscriber lines to a competitive eligible telecommunications carrier is unlikely to be offset by a corresponding reduction in its total embedded cost of service [citation omitted]. If the incumbent's lines decreased while its fixed costs remained roughly the same, its per-line costs would increase. Consequently, the incumbent would be entitled to higher support per line. *See* 47 C.F.R. § 36.601 *et seq.*"[13]

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10 *Federal-State Joint Board on Universal Service*, Forteenth Report & Order, Twenty-Second Order on Reconsideration, Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11248 (2001).

11 *Id.* at 11249-50, 11258-61.

12 *Id.* at 11255-56.

13 *Id.* at 11294.

In short, under the Commission's administration of the high cost mechanism today, the porting of universal service support to a facilities-based CETC does not result in a dollar-for-dollar reduction of support to the incumbent LEC. Instead, the LEC's embedded cost base is reallocated over the lesser number of subscriber lines the LEC continues to serve, and both the incumbent and competitive carriers receive high cost support on the same resulting per-line basis.[14] Neither the Commission nor the Federal-State Joint Board on Universal Service has chosen to depart from this mechanism to the present.[15]

Under these circumstances, it can be seen that there is no place in the Commission's high cost support regulatory regime for the sentence which GCI now belatedly seeks to reinstate. The omission of this language is not a mere editorial oversight, as GCI would have the Commission believe. Instead, GCI's effort to reinsert into the rules the Deleted Sentence implicates fundamental competitive policy issues for the administration of universal service support, particularly for the rural community. These policy issues are part of an ongoing dialogue and analysis in which the Commission, the Federal-State Joint Board on Universal Service, and representatives of private industry are all deeply involved. The complexity of these issues is reflected in the fact that it has taken USAC many months just to develop the form that will be used to help gather data on the migration of customers between incumbent and competitive carriers and the provision of service to new lines.[16]

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14 Interestingly, the author of the GCI Letter, in testimony last year before the Regulatory Commission of Alaska, endorsed precisely this analysis of how the federal high cost mechanism operates. *See* U-97-82, U-97-143, direct testimony of John T. Nakahata on behalf of GCI, April 5, 2004, at 29-31.

15 *See Virginia Cellular, LLC,* 19 FCC Rcd 1563, 1583 (2004); *Federal-State Joint Board on Universal Service,* Recommended Decision, paras. 4, 88, 91, 94-96, released February 27, 2004.

16 *See* USAC announcement, "FCC Form 525 (Competitive Carrier Line County Report) Approved by OMB," August 3, 2005, www.universalservice.org/hc/whatsnew/082005.asp.

It would be unduly harmful to this process, and thereby contrary to the public interest, to have the language cited in the GCI Letter peremptorily reinserted into the Commission's rules. MTA and other rural carriers like it are entitled to rely on the predictability and stability of the high cost mechanism that the Commission has worked over the years to put in place and maintain.[17]

3. USAC's response to the FCC was not procedurally improper

GCI attempts to impeach the correspondence between USAC and the Commission appended to the GCI Letter as an improper "policy response" by USAC. USAC did nothing more than respond to a question from the FCC regarding how it administers the high cost mechanism in instances of both UNE and by-pass competition. Section 54.702(c) of the FCC's rules was certainly not intended to chill discussions between USAC and the Commission, from which USAC is to take direction and with which it works on implementing the universal service program. From USAC's perspective, it was not attempting to interpret an unclear regulation; it is only GCI that is attempting to characterize the regulations governing the high cost mechanism as unclear. Moreover, it was a representative of the FCC, not of USAC, that characterized USAC's reply to the question from the Commission as a "policy response."

Conclusion

The GCI Letter does not represent a proper vehicle for the creation of policy and is, at best, an untimely request for reconsideration of a final Commission decision made in 1999. The policy issues implicated in the GCI request for clerical "correction" are part of an ongoing industry dialogue being led by the Commission and the Federal-State Joint Board. The

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[17] *See* 47 U.S.C. § 254(b)(5); 16 FCC Rcd at 11255.

Commission's established terms for implementing the universal service high cost mechanism must not be disrupted to the detriment of service providers who are relying on those terms. GCI's request for relief should be denied.

Respectfully submitted,

Matanuska Telephone Association

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Robert Haga
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February 11, 1999

Ms. Irene Flannery
Chief, Accounting Policy Division
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C., 20554

Re: Clarification of Section 54.307

Dear Ms. Flannery:

Several parties have questioned USAC regarding the operation of Section 54.307 of the Commission's rules. As a result of these inquiries, USAC's High Cost and Low Income Committee authorized the corporation to seek clarification of Section 54.307 as it relates to the calculation of Universal Service support for both the competitive eligible telecommunications carrier (CETC) and the incumbent local exchange carrier (ILEC) in situations where both carriers are eligible recipients of support.

Specifically, we seek clarification of the phrase "captures an incumbent local exchange carrier's (ILEC) subscriber lines" in the calculation of support for the CETC.[1] Does the term "capture" mean only instances where the subscriber abandoned the ILEC's service for the CETC, or does it include instances where the subscriber adds service from the CETC in addition to its ILEC service (e.g., a second wireline service or wireless service)?

Additionally, USAC seeks clarification of the Section 54.307(a)(4) calculation methodology. Section 54.307(a)(4) requires that the amount of universal service support provided to an ILEC be reduced by an amount equal to the amount provided to such CETC for the lines that it captures from the incumbent. Did the Commission intend for USAC to calculate a per line amount for the CETC as described in Section 54.307 (a)(2), multiply the resulting amount by the number of captured lines, and subtract that amount from the support originally calculated for the incumbent per Section 54.307 (a)(4)?

1 47 C.F.R. § 54.307(a).

EXHIBIT A

The current rules operate such that ILEC "A" and CETC "B" would report their respective number of working loops as of December 31 of the previous year[2] (this assumes ILEC "A" and CETC "B" are both eligible telecommunications carriers providing service in ILEC "A's" serving area).[3] If ILEC "A" reports 800 lines and has total high cost support of $8,000 per month, the resulting per line support amount is equal to $10 per line per month. CETC "B" for that same period reports 200 customer lines in the service area, 100 of which are new customers and 100 of which have been "captured" from ILEC "A." The amount of support for CETC "B," at $10 per line, would then be $2000.[4] USAC then deducts the support amount associated with CETC "B's" captured lines from ILEC "A's" support.[5] ILEC "A's" support amount is thus adjusted to $7,000 per month ($8,000 minus $1,000 support associated with CETC "B's" 100 captured lines). Thus the operation of the rules provide $8.75 per line in support for ILEC "A's" 800 lines and $10 per line of support for CETC "B's" 200 lines.

We appreciate the Commission's attention to clarifying whether the operation of this section of its rules is what was intended or whether some other outcome should result. Please contact us if there are any questions regarding our request or if there is anything further we can do for you.

Sincerely,

Robert Haga
Secretary & Treasurer

RH:cah:\

Enclosure

cc: Craig Brown
Lisa Zaina
Tom Power
Linda Kinney
Kyle Dixon
Kevin Martin
Paul Gallant

2 47 C.F.R. §§ 36.611(h), 54.307(b).
3 47 C.F.R. §§ 54.201-54.207.
4 47 C.F.R. § 54.307(a)(1).
5 47 C.F.R. § 54.307(a)(4).